IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 11167 of 2007(D)

OS.88/2003 of ADDL.SUB COURT, ALAPPUZHA

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PETITIONERS:

1. P.THANKAMANI, AGED 60 YEARS,
   S/O.PEELI, CHAPRAYIL HOUSE,
   KALAVOOR P.O, ALAPPUZHA.

2. K.T.ROSAMMA, W/O.THANKAMANI, CHAPRAYIL
   HOUSE, KALAVOOR P.O., ALAPPUZHA.

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.R.SURAJ KUMAR

RESPONDENT:

FEDERAL BANK LTD., ALUVA, REP. BY ITS
BRANCH MANAGER, THUMPOLI P.O., ALAPPUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 11167 of 2007 D

JUDGMENT

Petitioners are the judgment debtors in O.S.No. 88/03 on the file of the Additional Sub Court, Alappuzha. In execution of the decree for realisation of money, the property hypothecated to the respondent Bank is brought to sale. Thereupon, the petitioners/judgment debtors filed Exhibit P1 objection, objecting to the sale of the property in full on the ground that sale of a portion of the property would be sufficient to discharge the entire debt and further that the price of the property shown by the decree holder is much less and that the minimum market value of the property is Rupees fifteen lakhs and it may fetch an amount of Rupees twenty lakhs also in a properly published out of court sale. The court below, vide Exhibit P2 order, rejected the said objection and also refused to fix the upset price.

2. It is contended before me by the learned counsel for the petitioners/judgment debtors that the value of the property shown in the sale proclamation is only Rs.4,50,000/- for an extent of 17.5 cents; that the property is worth at present between Rupees fifteen lakhs and Rupees twenty lakhs and that sale of only a portion of the property would be sufficient to discharge the entire debt due to the respondent/decree holder Bank.

3. It is worthy to note that the decree for money is charged on the scheduled property, the property having been hypothecated to the respondent /decree holder Bank. A contention that a portion of the property alone need be notified for sale is, hence, not tenable. As rightly held by the court below, the upset price of the property need not be fixed by the court, in the above circumstances. But, the court below has, in Exhibit P2 order, directed that the price stated by the

petitioners/judgment debtors and the respondent/ decree holder in the objection has also to be mentioned in the sale proclamation with a view to give an idea of the actual value of the property to the intending purchasers, so that the bid will not be for a meagre price. Thus, sufficient safeguard has been provided, vide Exhibit P2 order. Being a decree charged on the scheduled property, other contentions were rightly being repelled by the court below.

In the circumstances, there is no merit in this writ petition and hence, it is dismissed.

30th March, 2007 (K.P.Balachandran, Judge)

tkv